

(1) Supreme Court, U.S.
FILED

05-870 JAN 1 - 2006

No.

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

ZACHARIAH L. ROSS,

Petitioner

v.

DEPARTMENT OF PUBLIC SAFETY, OKLAHOMA

Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court of the State of Oklahoma

PETITION FOR WRIT OF CERTIORARI

ZACHARIAH L. ROSS
5521 CLOVERLAWN DRIVE
OKLAHOMA CITY, OK, 73135-5210
(405) 323-2519

QUESTIONS PRESENTED

1. Does a state statute that automatically exacts a punishment after a specified number convictions of a certain type or types, constitute a bill of attainder or double jeopardy.
2. Does the use of same convictions specified in Question 1, to impose a punishment described in Question 1 a second time, constitute double jeopardy.
3. Is the manner in which the State of Oklahoma suspends a person's driving privileges/rights due to the accumulation of points, constitute a violation the principal of separation of powers, a violation of equal protection, a violation of the Fifth Amendment, or a violation of the Fourteenth Amendment.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
TABLE OF AUTHORITIES	iii
I. OPINIONS BELOW	1
II. JURISDICTION.....	1
III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
IV. STATEMENT OF THE CASE	4
V. REASONS FOR GRANTING THE PETITION	5
VI. CONCLUSION.....	8

INDEX TO APPENDICES

APPENDIX A: Oklahoma Court of Civil Appeals
Opinion of June 16, 2005.

APPENDIX B: District Court of Oklahoma County
Judgement/Final Order of July 28, 2004.

APPENDIX C: District Court of Oklahoma County
Order (denial of motions) of April 1, 2005.

APPENDIX D: Oklahoma Supreme Court order
denying certiorari of October 3, 2005.

APPENDIX D: 47 O.S. §6-211

TABLE OF CONTENTS

<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976).....	7
<i>United States v. Lovett</i> , 328 U.S. 303 (1946).....	5

CONSTITUTIONAL PROVISIONS:

U.S. Const., Art. I §9 ¶3.....	2
U.S. Const., Amend. 5	2
U.S. Const., Amend 14	2
Okla. Const., Art. II §19 ¶1.....	2
Okla. Const., Art. II §7	3

STATUTES:

47 O.S. §6-211 (2005)	<i>passim</i>
47 O.S. §6-308(A)(B) (2005).....	3,5
California Penal Code 667(e)(2)(A) (2005).....	4

OTHER:

Oklahoma Administrative Code 595:10-7-70(3) (2004)	4
---	---

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

I. OPINIONS BELOW

1. Order of the Oklahoma Supreme Court, the highest court for civil cases, denying discretionary review in the State of Oklahoma to review the merits appears at Appendix D to this petition and is unpublished.
2. The Opinion of the Oklahoma Court of Civil Appeals relevant to this case concerning conclusions of law to review the merits appear at Appendix A to this petition and is unpublished.
3. The judgment of the District Court of Oklahoma County to review the merits appears at Appendix B to this petition and is unpublished. The Order denying motions to review the merits of appear at Appendix C.

II. JURISDICTION

The date on which the highest state court denied discretionary review my case was October 3, 2005. A copy of the Order appears at Appendix D. No petition for rehearing was sought.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. United States Constitution, Article I §9 ¶3:

No bill of attainder or ex post facto Law shall be passed.

2. United States Constitution, Amendment 5:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

3. United States Constitution, Amendment 14 §1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

4. Oklahoma Constitution, Art. II §19 ¶1:

The right of trial by jury shall be and remain inviolate, except in civil cases wherein the amount in controversy does not exceed One Thousand Five Hundred Dollars (\$1,500.00), or in criminal cases wherein punishment for the offense charged is by fine only, not exceeding One Thousand Five Hundred Dollars (\$1,500.00). Provided, however, that the Legislature may provide for jury trial in cases involving

lesser amounts. Juries for the trial of civil cases, involving more than Ten Thousand Dollars (\$10,000.00), and felony criminal cases shall consist of twelve (12) persons. All other juries shall consist of six (6) persons. However, in all cases the parties may agree on a lesser number of jurors than provided herein.

5. Oklahoma Constitution, Art. II §7:

No person shall be deprived of life, liberty, or property, without due process of law.

6. Title 47 Oklahoma Statutes §6-112 (2005):

Every licensee shall have his driver's license in his immediate possession at all times when operating a motor vehicle and shall display the same upon demand of a peace officer. However, no person charged with violating this section shall be convicted if he produces in court or the office of the arresting officer a driver's license theretofore issued to him and valid at the time of his arrest.

7. Title 47 Oklahoma Statutes §6-308(A)(B) (2005):

A. It is a misdemeanor for any person to violate any of the provisions of Section 47-6-101 et seq. of this title unless such violation is by Section 47-6-101 et seq. of this title or other law of this state declared to be a felony.

B. Unless another penalty is in Section 47-6-101 et seq. of this title or by laws of this state provided, every person convicted of a misdemeanor for the violation of any provision of Section 47-6-101 et seq. of this title shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

8. Title 47 Oklahoma Statutes §6-211 (2005):

This statute is lengthy and has been attached as Appendix E to this petition.

9. Califo □ Penal Code 667(e)(2)(A) (2005):

If a defendant has two or more prior felony convictions as defined in subdivision (d) that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of:

- (i) Three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior felony convictions.
- (ii) Imprisonment in the state prison for 25 years.
- (iii) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part2, or any period prescribed by Section 190 or 3046.

10. Oklahoma Administrative Code 595:10-7-70(3) (2004).

Upon the reinstatement of a person's privilege to drive after a suspension which was based on violations listed in 595:10-7-2 of these regulations, the points level shall be reduced to five (5) points or less as provided in these regulations.

IV. STATEMENT OF THE CASE

This case began when the Petitioner received an Order of Suspension on June 4, 2005, from the Oklahoma Department of Public Safety (DPS) informing him that his right to drive was being revoked due to points, and that he was ordered to surrender all proof of said rights by the DPS. After attending a short DPS Hearing in front of a DPS Officer, the Petitioner paid the \$250 cash appeal bond along with filing the requisite civil petition and was subsequently entered into the

Oklahoma County District Court as a case of civil relief of more than \$10,000.

During the trial the Defense presented evidence and one witness Lea Frizzell, the DPS Hearing Officer. The Petitioner raised the same arguments during the trial that he is raising now in this Petition for Certiorari. The District Court Judge oral judgment can be found in Appendix B.

The Petitioner fully complied with the District Court's order, and in appealing its decision. The DPS chose not to comply. The DPS did not issue the required permit enabling the Plaintiff to drive¹. When they did finally decide to comply, it was only off and on for short periods throughout the appeal to the Oklahoma Court of Civil Appeals. During the second period that the DPS decided to violated the District Court's order, the Petitioner filed a Motion for Modification and Motion for Contempt in District Court which was denied by the Order found in Appendix C. Similar motions were filed in Court of Civil Appeals, which were denied by the Opinion found in Appendix A. A Petition for Certiorari was filed with the Oklahoma Supreme Court and was denied by the Order found in Appendix D. What I can only assume as a compromise offered due to guilt, the DPS offered to give "credit for time already served under revocation" in a proposed order spreading the mandate.

V. REASONS FOR GRANTING THE PETITION

A. One of the issues that the Petitioner feels should be addressed by this Court is the disturbing trend that has been brought on in the past few decades, is the disguising of double jeopardy and a bill of attainder (a.k.a. trial by legislation, described in *United States v. Lovett*, 328 U.S. 303 (1946)) as legitimate extrajudicial punishment, behind previous convictions. The theory being that the summation

¹ 47 O.S. §6-308(A)(B) (2005)

of convictions means that a party is also guilty of a greater crime that justifies the extrajudicial punishment. In this case, according to the Oklahoma Court of Civil Appeals Opinion in Appendix A, since the Petitioner has been found guilty of ten points worth of traffic violations, then he is also guilty of not "complying with reasonable police power requirements in the interest of public safety and welfare." At nine points you are not guilty, at ten points you are. It should be noted that the Petitioner has never been charged with such an offense.

To give the court another example, would be the various "three strike" laws that have been enacted in this country. The most well known of which is California's "Three Strikes" law². Again, you have a law that automatically imposes the extrajudicial punishment of up to life imprisonment for a summation of crimes. The summation of violent felony convictions under this law means that a party is also guilty of being a danger to society which justifies the sentence of up to life imprisonment, even though the party has never been found guilty of the unwritten, implied crime.

There is also a second double jeopardy question in this case. Under the DPS's Points System, five points are still attached on a person's record after a suspension due to points which can be used again to suspend a license.³

B. The next issue concerns the equal protection and the fairness of the administrative procedure set up in this case. In the other cases where a driver's license can be suspended, you have to be found guilty of a requisite crime such as a DUI, to which the additional punishment is a revocation of your driving rights. In such cases you not only get a criminal trial but you also have the right to a civil trial to which if you can prove that a revocation of your license imposes too much hardship, you can get out of the revocation⁴. In such cases

² California Penal Code 667(e)(2)(A) (2005)

³ Oklahoma Administrative Code 595:10-7-70(3) (2004)

⁴ 47 O.S. §6-211(D) (2005)

the State of Oklahoma has set up unjustified additional costs in contrast to the regular criminal trial. This means that the DPS has to maintain and install ignition interlock devices for pendency of the civil trial⁵. The State seems to bend over backwards in unnecessary administrative costs and procedures for DUI convictions or other convictions to which a suspension is required, but railroads people who are subject to suspension due to points.

The Petitioner in this case had to bring this case to civil court, to which the Petitioner has no right to know opposing evidence⁶, which are among the various other rights that would have been given in a criminal trial. The DPS is free to violate the orders of the District Court with impunity as has happened in this case where the DPS was ordered to supply the Petitioner with a temporary driving permit which they failed to do.

C. Another major issue in this case is the validity of administrative procedures in United States against one's various constitutional rights. The U.S. Constitution allows for two types of judicial procedures. Up until the early to middle 1900's, there was no such thing as administrative proceedings. Civil and Criminal procedure could handle every type of case, yet now legislature's like to invent administrative proceedings in order to skirt individual's rights in some form or another. Take the case of *Mathews v. Eldridge*, 424 U.S. 319 (1976) for example which is a removal of disability insurance benefits case. Why does government not simply say that such benefits are given under certain conditions, and that if you are drawing these benefits and don't meet the requirements; your committing a crime. The established criminal procedure fits nicely where, depending on the circumstances, bail could be set equal to the amount of benefits, and a conviction could be by fine,

⁵ 47 O.S. §6-211(L) (2005)

⁶ 47 O.S. §6-211(A) (2005)

community service, or imprisonment equal to the undeserved benefits. The fact that the State had reason to terminate his benefits means they would have probable cause in such a case.

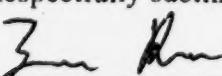
Every time a new administrative proceeding is adopted, the additional legislation that sets up additional bureaucracy at a cost that dwarfs what it would have cost the government to simply go with a standard criminal or civil procedure. Then you have to add the cost of taxing the judiciary with all the time it spends making a determination as to whether due process of law has been fulfilled in a new administrative proceeding; if it has not, you add the taxing cost of remedying the situation by the court. This again dwarfs the amount of time a court would need in determining due process of law in a standard civil or criminal proceeding.

The U.S. Constitution is contract between the government and the people it serves which is founded on the basic premise that every right, or a privilege granted to you be law, has conditions attached, violations of those conditions are known as crimes. Punishment of these crimes could be handled numerous ways, which the right to due process of law never comes into question with standard criminal procedure. This rationale worked for the first 15 years, and the Petitioner does not see why it will not work in this case. If it isn't broke, don't fix it.

IV. CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Zachariah L. Ross

Signed and Dated this 1st day of January, 2006.

NOT FOR OFFICIAL PUBLICATION

THE COURT OF CIVIL APPEALS OF THE STATE OF
OKLAHOMA

DIVISION I

ZACHARIAH L. ROSS,)
Plaintiff/Appellant,)
)
vs.) Case No. 101,140
)
STATE OF OKLAHOMA,)
Ex rel. OKALHOMA)
DEPARTMENT OF PUBLIC)
SAFETY,)
Defendant/Appellee.)

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE GLENN M. JONES, JUDGE

AFFIRMED

Zachariah L. Ross,
Oklahoma City, Oklahoma, *Pro Se* Plaintiff/Appellant,

Kenneth T. Linn,
General Counsel,
Oklahoma Department of Public Safety,
Oklahoma City, Oklahoma For Defendant/Appellee.

OPINION

OPINION BY BAY MITCHELL, JUDGE:

APPENDIX A

¶1 Zachariah L. Ross, Plaintiff/Appellant, appeals from a district court judgment sustaining a one-month suspension of Appellant's driver's license by the Oklahoma Department of Public Safety (DPS), Defendant/Appellee. For the reasons set forth below, we affirm.

¶2 Appellant amassed eleven points on his driving record due to six separate driving infractions between December, 2001, and May, 2004. On June 5, 2004, under the authority of Oklahoma Administrative Code (OAC) 595:10-7-6¹, DPS notified Appellant his driving privileges was to be suspended for one month beginning July 5, 2004. Appellant timely filed the instant district court action challenging the suspension pursuant to 47 O.S. Supp. 2003 §6-211. Appellant did not dispute the accuracy of his driving record at trial, but rather argued the suspension violated several constitutional provisions. The trial court rejected Appellant's arguments and upheld the suspension.

¶3 Because the facts of this case are undisputed, only questions of law are presented on appeal and therefore our review is *de novo*. *In re Estate of Kendall*, 1998 OK CIV APP 171, ¶4, 968 P.2d 364, 365. This Court has plenary, independent and nondeferential authority to reexamine the trial court's legal rulings. *Id.*, citing *Neil Acquisition L.L.C. v. Wingrod Inv. Corp.*, 1996 OK 125, 932 P.2d 1100 n.1.

¶4 Appellant advances six propositions of error on appeal: Two propositions assert the driver's license suspension constituted double jeopardy; two propositions contend the suspension violated Appellant's due process rights; one proposition claims OAC 595:10-7-6 and §6-206(B) operate as a bill of attainder in violation of OKLA. CONST. Art. 2, §15; and one proposition merely avers Appellant was never

¹ OAC 595:10-7-6 allows DPS to suspend the driving privileges of any person who accumulates ten or more points on his or her driving record. The statutory authority for such action is found in 47 O.S. Supp. 2003 §6-206(B).

informed that any points were being placed on his driving record as a result of his citations.

¶5 We initially note Appellant's last proposition of error regarding lack of notice of driving record points is not supported by argument or citation of authority. Accordingly we do not consider it on appeal. *Red River Constr. Co. v. City of Norman*, 1981 OK 20, ¶10, 624 P.2d 1064, 1068. We reiterate that litigants proceeding *pro se* in a civil appeal are held to the same standard as an attorney. *Funnell v. Jones*, 1985 OK 73, ¶4, 737 P.2d 105, 107.

¶6 The Oklahoma Supreme Court has held:

The operation of a motor vehicle on a public highway is not a natural, absolute right, but a conditional privilege which may be granted, suspended, or revoked under the police power of the state. A driver's license is not a contract of property right in the constitutional sense, and therefore its revocation does not constitute the taking of property. The privilege is granted to those who are qualified, who comply with reasonable police power requirements in the interest of public safety and welfare, and is withheld from those who do not.

Robertson v. State ex rel. Lester, 1972 OK 126, ¶9, 501 P.2d 1099, 1101. With this precedent in mind, we address the remainder of Appellant's propositions of error, beginning with his bill of attainder argument.

¶7 Article 2, §15 of the Oklahoma Constitution mandates that no bill of attainder shall ever be passed. "A bill of attainder is a legislative act which inflicts punishment without a judicial trial." *Haley v. Okla. Alcoholic Beverage Control Bd.*, 1984 OK CIV APP 58, ¶18, 696 P.2d 1046, 1049. Accord *U.S. v. Brown*, 381 U.S. 437, 441-2, 85 S.Ct. 1707, 1711, 14 L.Ed.2d 484 (1965). Such bills focus on past action. *American Communications Ass'n v. Douds*, 339 U.S. 382, 70 S.Ct. 674, 94 L.Ed.2d 925 (1950). "[A] bill of attainder exists if there is nothing that those persons affected

by the law could ever do to change the result." *Haley* at ¶19, 696 P.2d at 1049, *citing Douds*, 339 U.S. at 414, 70 S.Ct. at 692.

¶18 Assuming for the purposes of this opinion that suspension of a driver's license constitutes "punishment" under Art. 2, §15, *see Price v. Reed*, 1986 OK 43, ¶11, 725 P.2d 1254, 1259-60 (driver's license revocation is part of civil/regulatory scheme that serves governmental purpose vastly different from criminal punishment), there is something Appellant – or licensed driver – can do to change the result of the application of OAC 595:10-7-6. There are various ways under OAC 595:10-7-10 that drivers can obtain a reduction in the number of points on their driving record. One method involves taking a DPS-approved driver improvement or defensive driving course and another involves simply driving for a specified period of time without being convicted of a traffic offense. Neither OAC 595:10-7-6 nor §6-206(B) constitute bills of attainder.

¶19 With respect to Appellant's double jeopardy arguments, we iterate the double jeopardy clause of OKLA. CONST. Art. 2, §21, does not apply to civil driver's license revocation proceedings. *Price v. Reed*, 1986 OK 43 at 11¶, 725 P.2d at 1259-60. Accordingly, those two propositions of error are without merit.

¶10 As his fourth and fifth propositions of error, Appellant argues his right to due process of law under OKLA. CONST. Art. 2, §7², was violated because DPS ordered his driver's license suspended before any judicial action was taken, he was forced to file a suit to challenge the suspension, and due process was not afforded to him until *after* his license was suspended. Due process is accomplished by "an orderly proceeding adapted to the nature of the case, before a tribunal having jurisdiction, which proceeds upon notice, with an

² Art 2, §7 states, "No person shall be deprived of life, liberty, or property, without due process of law."

opportunity to be heard, with full power to grant relief." *State ex rel. Okla. Employment Sec. Comm'n v. Morrow*, 1994 OK CIV APP 86, ¶14, 877 P.2d 1182, 1185, quoting *Kingwood Oil Co. v. Corp. Comm'n*, 1964 OK 241, ¶10, 396 P.2d 1008 (syllabus 2).

¶11 Appellant was notified in writing by DPS that his license was going to be suspended. He challenged the proposed suspension first before a DPS hearing officer and then in district court. Appellant was afforded an opportunity to present evidence at trial and challenge the evidence presented by DPS. Only after such procedures did the district court issue an order suspending Appellant's driver's license. The record further reveals, however, that Appellant's driving privileges have yet to be suspended because the trial court's ruling was stayed during the pendency of this appeal. Appellant does not complain about notice or an opportunity to be heard, nor does he argue DPS or the district court lacked jurisdiction or the power to grant him relief. He simply does not like the process utilized by the State in revocation proceedings. Such dislike does not arise to a constitutional violation. Due process of law was accomplished here.

¶12 On the basis of the foregoing, we hold the trial court correctly sustained the one-month suspension of Appellant's driver's license. Accordingly, the judgment of the trial court is affirmed. Appellant's "Emergency Motion for Stay, Motion for Sanctions, Motion for Modification, and Motion for Contempt," filed during the pendency of this appeal, are hereby denied.

¶13 AFFIRMED

ADAMS, P.J., and BUETTNER, C.J. (sitting by designation), concur

FRONT PAGE FILE STAMP IS AS FOLLOWS:

FILED

**COURT OF CIVIL APPEALS
STATE OF OKLAHOMA**

JUN 16 2005

**MICHAEL S. RICHIE
CLERK**

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

ZACHARIAH L. ROSS,)
Plaintiff,)
)
vs.) No. CJ-04-5313
)
)
STATE OF OKLAHOMA,)
Ex rel. OKALHOMA)
DEPARTMENT OF PUBLIC)
SAFETY,)
Defendant.)

JUDGEMENT/FINAL ORDER

This action came on for hearing/trial on this 28 day of July, 2004. Having heard evidence and argument, and being fully advised, this Court finds that the Plaintiff's driver's license revocation/suspension should be sustained. This Court further finds that Plaintiff's petition for modified driving privileges should be denied.

IT IS THEREFORE ORDERED, ADFUDGED AND DECREED:

- 1). That the revocation/suspension of Plaintiff's driver's license dated 6-5, 2004, is sustained and the period of revocation/suspension shall commence on the 29th day of August, 2004, for a period of 30 days without modification.
- 2). That the Plaintiff shall surrender all evidence of driving privileges, prior to the above commencement date, to the Department of Public Safety, P.O. Box 11415, Oklahoma City, Oklahoma 73136. Credit for time served shall not commence until a filed copy of this order and all evidence of driving privileges has been surrendered.

APPENDIX B

3). That bond is exonerated and any previous Order of this Court relating to driving privileges is vacated.

4). That should this matter be appealed, the Department, upon receipt of an Oklahoma Supreme Court file stamped copy of a suspension. During the pendency of appeal, a temporary driving permit shall be issued entitling the Plaintiff full driving privileges, if otherwise eligible.

Signed this 28th day of July, 2004.

s/ Glenn M. Jones
Judge of the District Court

s/ Zachariah Ross

Pro se

s/ Kenneth T. Linn

Attorney for Defendant

Legal Misc 04-0084

Sustain w/o mod 796

FRONT PAGE FILE STAMP IS AS FOLLOWS:

FILED IN THE DISTRICT COURT
OKALHOMA COUNTY, OKLA.

JUL 28 2004

PATRICIA PRESLEY, COURT CLERK

by _____

Deputy

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

ZACHARIAH L. ROSS,)
Plaintiff,)
vs.) Case No. CJ-2004-5313
STATE OF OKLAHOMA,)
Ex rel. OKALHOMA)
DEPARTMENT OF PUBLIC)
SAFETY,)
Defendant.)

ORDER

This matter comes on for hearing this 1st day of April, 2005. Plaintiff appears personally and the Defendant appears by and through its attorney, Jerry C. Blackburn. The Court upon reviewing the Court file and hearing the arguments of the parties finds that Plaintiff's Motion for Modification and for Contempt should be denied on the ground that the Court lacks jurisdiction under 47 O.S. Supp. 2003 §6-211.

THEREFORE IT IS ORDERED, ADJUDGED AND DECREED that the Plaintiff's Motion for Modification and Motion for Contempt is denied.

s/ Glenn M. Jones
Judge of the District Court

s/ Zachariah Ross
Zachariah Ross, Pro se
5521 Cloverlawn Dr.
Oklahoma City, OK 73135

APPENDIX C

s/ Jerry C. Blackburn
Jerry C. Blackburn OBA#828
Attorney for Defendant
PO Box 11415
Oklahoma City, OK 73136
(405) 425-2148

FRONT PAGE FILE STAMP IS AS FOLLOWS:

FILED IN THE DISTRICT COURT
OKALHOMA COUNTY, OKLA.

APR - 1 2005

PATRICIA PRESLEY, COURT CLERK
by _____
Deputy

IN THE SUPREME COURT OF THE STATE OF
OKLAHOMA

Monday, October 3, 2005

THE CLERK IS DIRECTED TO ENTER THE
FOLLOWING ORDERS OF THE COURT:

* * *

101,140 Zachariah L. Ross v. State of Oklahoma, ex
 rel., Department of Public Safety
Petition for certiorari is denied.
ALL JUSTICES CONCUR

* * *

s/ Joseph M. Watt
CHIEF JUSTICE

FRONT PAGE FILE STAMP IS AS FOLLOWS:

FILED
SUPREME COURT
STATE OF OKLAHOMA
OCT 3 2005
MICHAEL S. RICHIE
CLERK

APPENDIX D

47 O.S. §6-211

A. Any person denied driving privileges, or whose driving privilege has been canceled, denied, suspended or revoked by the Department, except where such cancellation, denial, suspension or revocation is mandatory, under the provisions of Section 6-205 of this title, or disqualified by the Department, under the provisions of Section 6-205.2 of this title, shall have the right of appeal to the district court as hereinafter provided. Proceedings before the district court shall be exempt from the provisions of the Oklahoma Pleading and Discovery codes, except that the appeal shall be by petition, without responsive pleadings. The district court is hereby vested with original jurisdiction to hear said petition.

B. A person whose driving privilege is denied, canceled, revoked or suspended due to inability to meet standards prescribed by law, or due to an out-of-state conviction or violation, or due to an excessive point accumulation on the traffic record, or for an unlawful license issued, may appeal in the county in which the person resides.

C. Any person whose driving privilege is canceled, denied, suspended or revoked may appeal to the district court in the county in which the offense was committed upon which the Department based its order.

D. A person whose driving privilege is revoked or denied or who is denied a hearing pursuant to Section 753 or 754 of this title may appeal to the district court in the county in which the arrest occurred relating to the test refusal or test result, as shown by the records of the Department.

E. The petition shall be filed within thirty (30) days after the order has been served upon the person, except a petition relating to an implied consent revocation shall be filed within thirty (30) days after the Department gives notice to the person that the revocation is sustained as provided in Section 754 of this title. It shall be the duty of the district court to enter an order setting the matter for hearing not less than

fifteen (15) days and not more than thirty (30) days from the date the petition is filed. A certified copy of petition and order for hearing shall be served forthwith by the clerk of the court upon the Commissioner of Public Safety by certified mail at the Department of Public Safety, Oklahoma City, Oklahoma.

F. At a hearing on a revocation by the Department pursuant to the implied consent laws as provided in Sections 6-205.1, 753 and 754 of this title, the court shall not consider the merits of the revocation action unless a written request for an administrative hearing was timely submitted to the Department and the person actually exercised the opportunity to appear as provided in Section 754 of this title and the Department entered an order sustaining the revocation.

G. Upon a hearing relating to a revocation pursuant to a conviction for an offense enumerated in Section 6-205 or 6-205.2 of this title, the court shall not consider the propriety or merits of the revocation action, except to correct the identity of the person convicted as shown by records of the Department.

H. In the event the Department declines to modify a revocation order issued pursuant to Section 753, Section 754, paragraph 2 of subsection A of Section 6-205 or Section 6-205.1 of this title, which is subject to modification pursuant to Section 11-906.4 of this title or Section 6-205.1 of this title, a petition for modification may be included with the appeal or separately filed at any time, and the district court may, in its discretion, modify the revocation as provided for in Section 755 of this title.

I. The court shall take testimony and examine the facts and circumstances, including all of the records on file in the office of the Department of Public Safety relative to the offense committed and the driving record of the person, and determine from the facts, circumstances, and records whether or not the petitioner is entitled to driving privileges or shall be subject to the order of denial, cancellation, suspension or

revocation issued by the Department. The court may also determine whether or not, from the person's previous driving record, the order was for a longer period of time than such facts and circumstances warranted. In case the court finds that the order was not justified, the court may sustain the appeal, vacate the order of the Department and direct that driving privileges be restored to the petitioner, if otherwise eligible. The court may, in case it determines the order was justified, but that the period of the suspension or revocation was excessive, enter an order modifying the same as provided by law.

J. The testimony of any hearing pursuant to this section shall be taken by the court stenographer and preserved for the purpose of appeal and, in case the Department files notice of appeal from the order of the court as provided herein, the court shall order and direct the court clerk to prepare and furnish a complete transcript of all pleadings and proceedings, together with a complete transcript taken at said hearing at no cost to the Department, except the cost of transcribing.

K. In order to stay or supersede any order of the Department, the petitioner may execute and file a cash appeal bond in the sum of Two Hundred Fifty Dollars (\$250.00) with the clerk of the court, to be approved by the court clerk. A certified copy of the bond endorsed with the approval of the court clerk shall be served along with the notice of hearing and petition.

The bond shall be to the State of Oklahoma and conditioned that the petitioner will prosecute the appeal with due diligence and during pendency of the appeal abide by and not violate any of the laws of this state or any other state in the operation of a motor vehicle, and that the petitioner will abide by and perform the final judgment of the court therein, and in case the appeal is finally denied the appellant will pay all court costs incurred in the appeal in the district court. If the petitioner is convicted of a traffic offense during

the pendency of the appeal or fails to prosecute the appeal with due diligence, the bond may be forfeited to the court fund upon application by the Department and after hearing before the court in which the appeal is pending.

L. After filing and approval of the appeal bond and the furnishing thereof to the Department as hereby provided, the Department shall restore driving privileges to the person if otherwise eligible, and the person shall be permitted to operate a motor vehicle pending the appeal, under terms and conditions as prescribed in the bond which shall include the installation of an ignition interlock device on every motor vehicle operated by the person, pursuant to Section 754.1 or 755 of this title, if the person was denied modification pursuant to any provision of paragraph 2 of subsection A of Section 6-205 or Section 6-205.1, 753 or 754 of this title; provided, however, if the order of the Department is sustained in final judgment, the court shall, in such final judgment, enter an order extending the period of suspension or revocation for such time as the petitioner was permitted to operate motor vehicles under the provisions of an appeal bond, and the court shall also in such final judgment direct and require the immediate surrender of any driver license or licenses to the Department.

M. An appeal may be taken by the person or by the Department from the order or judgment of the district court to the Supreme Court of the State of Oklahoma as otherwise provided by law.